United States Department of Justice
Office of the United States Trustee
1100 Commerce St. Room 976
Dallas, Texas 75242
(214) 767-1075

Erin Marie Schmidt,
for the United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

| | | | |
|---|---|---|---|
| **IN RE:** | § | | |
| | § | | |
| **PRM Realty Group, LLC,** | § | **CASE NO:** | **10-30241-HDH-11** |
| | § | | |
| | § | | |
| **Debtor-in-Possession** | § | **Hearing:** | **January 27, 2011** |
| | § | | **9:00 a.m.** |

**United States Trustee's Motion to Convert to Chapter 7 under
11 U.S.C. § 1112(b)(1)**

TO THE HONORABLE HARLIN D. HALE, U.S. BANKRUPTCY JUDGE:

The United States Trustee for Region 6 moves to convert this case to one under chapter 7 under 11 U.S.C. § 1112(b)(1). The United States Trustee would show:

**Jurisdiction**

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1334, 28 U.S.C. § 157(a)(1), and the standing order of reference. Converting a case is a core matter that the Court has the power to resolve. 28 U.S.C. § 157(b)(2)(A).

**Facts**

2. Procedural History. On January 6, 2010, PRM Realty Group, LLC ("Debtor") filed its voluntary chapter 11 petition in the Northern District of Texas.

3. To date, no committee of unsecured creditors has been appointed.

4. Peter Morris. The Debtor's 90% shareholder and sole officer is Peter Morris. Mr. Morris is the primary decision-maker for the Debtor.

5. Mr. Morris is in a personal bankruptcy, case no. 10-30240-hdh-11, which is currently pending in the Northern District of Texas. A motion for a chapter 11 trustee is currently pending in Mr. Morris's personal case and is scheduled for hearing March 1, 2011 [docket nos. 108; 255].

6. Related Bankruptcy Cases Pending in Northern District of Texas. The Debtor is engaged in the business of purchasing and developing real estate. It owns, in percentages ranging from 100% to 30%, interests in various real estate holdings. A number of these entities are also in bankruptcies pending in the Northern District of Texas. Some of these cases include:

| **Case Name** | **Case Number** | **Filing Date** | **Case Status** |
|---|---|---|---|
| *Bon Secour Partners, LLC* | 09-37580-HDH-11 | November 3, 2009 | No plan filed |
| *PRS II, LLC* | 09-31436-HDH-11 | March 6, 2009 | No plan filed |
| *PMP II, LLC* | 10-30252-HDH-11 | January 7, 2010 | Confirmed August 17, 2010 |
| *Maluhia Development Group, LLC* | 10-30475-HDH-11 | January 21, 2010 | No plan filed |
| *Maluhia One, LLC* | 10-30987-HDH-11 | February 8, 2010 | Confirmation denied November 1, 2010 |
| *Maluhia Eight, LLC* | 10-30986-HDH-11 | February 8, 2010 | Confirmation denied October 26, 2010 |
| *Maluhia Nine, LLC* | 10-30988-HDH-11 | February 8, 2010 | Confirmation denied November 1, 2010 |
| *Long Bay Partners, LLC* | 10-35124-HDH-11 | July 27, 2010 | No plan filed |
| *PRM Development, LLC* | 10-35547-HDH-11 | August 6, 2010 | No plan filed |
| *Hans Lollick Land Company, LLLP* | 10-36161-BJH-11 | September 3, 2010 | No plan filed |
| *Little Hans Lollick Holdings, LLP* | 10-36159-BJH-11 | September 3, 2010 | No plan filed |

This list does not include certain Peter Morris-related cases that have been dismissed.

7. The Debtor is not jointly administered or substantively consolidated with any of

these cases.

8. Operating Reports. The Debtor filed operating reports for the period January 6, 2010 through October 31, 2010. These reports may be summarized as follows:

| | **Receipts** | **Disbursements** | **Net Cash Flow** | **Cash** |
|---|---|---|---|---|
| **January 2010** | $56,649.70 | $56,990.70 | -$341.00 | -$748.76 |
| **Feb 2010** | $64,050.42 | $46,476.21 | $17,574.21 | $17,166.45 |
| **March 2010** | $88,858.00 | $85,932.69 | $2,925.31 | $20,503.76 |
| **April 2010** | $34,788.94 | $46,761.44 | -$11,972.50 | $8,531.26 |
| **May 2010** | $82,517.00 | $83,619.54 | -$1,102.54 | $3,387.72 |
| **June 2010** | $107,283.02 | $71,984.65 | $35,298.37 | $38,298.37 |
| **July 2010** | $85,575.24 | $123,564.03 | -$37,988.79 | $697.30 |
| **August 2010** | $108,190.01 | $113,746.00 | -$5,555.99 | -$4,858.69 |
| **September 2010** | $137,077.19 | $90,954.75 | $46,122.44 | $41,263.75 |
| **October 2010** | $86,816.57 | $74.502.22 | $12,314.35 | $53,578.10 |
| **Totals** | **$851,806.09** | **$720,030.01** | **$57,273.86** | |

9. The Debtor has incurred substantial post-petition liabilities. As of October 31, 2010, the Debtor owed $432,672.18 in accounts payables; of this amount, $279,502.89 is greater than 91 days old.

10. Of these post-petition liabilities, $96,744.97 is owed to either federal or state taxing authorities. Per its October 31, 2010 operating report, the Debtor owes $89,802.97 to the Internal Revenue Service and $6,942 to state taxing authorities. The IRS has filed a request for payment of $83,136.01 for post-petition FICA taxes incurred after the filing of the case. [Claim 89-2]. Similarly, the State of Wisconsin Department of Revenue has filed a request for payment of $12,137.98 for withholding taxes incurred post-petition. [Claim 93-1].

11. The Debtor owes substantial post-petition debt to its principal Peter Morris, who transferred $411,069 to the Debtor between January and October 2010. Per its October

2010 operating report, the Debtor still owes $384,969 in post-petition loans to Mr. Morris. These transfers are summarized below:

| Date | Amounted Transferred | Amount Still Owing | Description |
|---|---|---|---|
| January 28, 2010 | $56,449.70 | $30,349.70 | Various Support EOM |
| February 28, 2010 | $46,476.21 | $46,476.21 | Various Support EOM |
| March 17, 2010 | $3,800.00 | $3,800.00 | Transfers to PRM |
| March 28, 2010 | $30,527.95 | $30,527.95 | Various Support EOM |
| April 28, 2010 | $7,710.19 | $7,710.19 | Various Support EOM |
| April 28, 2010 | $17,000.00 | $17,000.00 | Transfers to PRM |
| May 28, 2010 | $9,871.85 | $9,871.85 | Various Support EOM |
| May 28, 2010 | $1,300.00 | $1,300.00 | Transfers to PRM |
| June 28, 2010 | $10,467.53 | $10,467.53 | Various Support EOM |
| July 28, 2010 | $76,265.10 | $76,265.10 | Various Support EOM |
| August 28, 2010 | $86,962.76 | $86,962.76 | Various Support EOM |
| September 28, 2010 | $55,089.01 | $55,089.01 | Various Support EOM |
| October 28, 2010 | $9,148.70 | $9,148.70 | Various Support EOM |
| | | | |
| **Totals** | **$411,069.00** | **$384,969.00** | |

Since the filing of the case, Debtor has paid Mr. Morris $26,100 back on his post-petition disbursements to the Debtor, leaving $384,969 still owing.

## Legal Analysis and Argument

General discussion of burdens when conversion is sought:

12. Under section 1112(b), the Court "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause." 11 U.S.C. § 1112(b)(1).

Diminution of assets of the estate with no hope of reorganization

13. Cause exists to convert this case because of diminution of the estate and the absence of a reasonable likelihood of rehabilitation. 11 U.S.C. § 1112(b)(4)(A). In determining whether to dismiss or convert a case under § 1112(b)(4)(A), the court should

1) examine the Debtor's prior financial record to determine if it is profitable or losing money and 2) determine whether rehabilitation is likely given the evidence presented. *In re Gateway Access Solutions, Inc.*, 374 B.R. 556, 562 (Bankr. M.D. Pa. 2007). Information relevant to this analysis includes whether the debtor has borrowed money post-petition or if there is a pattern of declining assets and substantial continuing losses. *Gateway,* 374 B.R. 563-4. Negative cash flow and an inability to pay post-petition expenses as they come due may constitute diminution of the estate under § 1112(b)(4). *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D. N.Y. 2003).

14. The estate has steadily diminished during the pendency of this case. Even though its October 2010 cash position of $53,578 was its strongest to date, the Debtor has incurred nearly half a million dollars in post-petition liabilities. The Debtor owes $96,744 alone in post-petition tax liabilities. Furthermore, its cash flow has been erratic, ranging from a high of $53,578 in October 2010 to a low of negative $4,858 in August 2010.

15. There is little likelihood of reorganization. The Debtor has been in bankruptcy for nearly a year but has not yet proposed a plan of reorganization. It is particularly telling that only one of its affiliates, PMP II, LLC, has confirmed a plan of reorganization. In three cases, confirmation has been denied. Given that its reorganization is dependent on the reorganization of its affiliates, the Debtor does not appear able to reorganize.

Cause exists to convert this case for gross mismanagement

16. Cause exists to convert this case to one under chapter 7 as there has been gross mismanagement of the estate. *See* 11 U.S.C. § 1112(b)(4)(B). Borrowing post-petition funds without prior court approval may constitute gross mismanagement for purposes of

§ 1112(b). *In re Gateway Access Solutions, Inc.*, 374 B.R. 556, 566 (Bankr. M.D. Pa. 2007).

17. Since filing, Peter Morris has loaned $411,069 to the Debtor without a court order. Furthermore, the Debtor has paid $22,100 of this post-petition loan back to Mr. Morris without court order.

Cause exists to convert this case for failure to pay taxes

18. Cause exists to convert this case to one under chapter 7 because the Debtor has not timely paid taxes owed after the date of the order for relief. *See* 11 U.S.C. § 1112(b)(4)(I). The Debtor owes $96,744 in post-petition tax liabilities as of October 31, 2010. Most of this is federal taxes.

For these reasons, the United States Trustee requests the Court to convert this case to chapter 7. The United States Trustee requests any other relief to which he is entitles.

DATED: December 30, 2010

Respectfully submitted,

WILLIAM T. NEARY
UNITED STATES TRUSTEE

/s/ Erin Marie Schmidt
Erin Marie Schmidt
Texas State Bar No. 24033042
Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242
(214) 767-1075
erin.schmidt2@usdoj.gov

Certificate of Conference

I certify that on December 30, 2010, I conferred with Melanie Goolsby, counsel for the Debtor. The Debtor is opposed to the relief requested.

/s/ Erin Marie Schmidt
Erin Marie Schmidt

Certificate of Service

I certify that I sent copies of the foregoing document to the following parties via U.S. Mail, postage prepaid, on January 3, 2011 or via ECF on December 30, 2010 to the parties listed below.

/s/ Erin Marie Schmidt
Erin Marie Schmidt

**George H. Barber**
Kane, Russell, Coleman & Logan, PC
1601 Elm St., Suite 3700
Dallas, TX 75201

**John Joseph Kane**
Kane Russell Coleman and Logan, P.C.
1601 Elm St., Ste. 3700
Dallas, TX 75201

**Jarrett L. Hale**
Hunton and Williams, LLP
1445 Ross Avenue, Suite 3700
Dallas, TX 75201

**Demetra L. Liggins**
Thompson & Knight LLP
333 Clay Street
Suite 3300
Houston, TX 77002

**Lyndel Anne Mason**
Cavazos, Hendricks, Poirot & Smitham, PC
900 Jackson St., Ste. 570
Dallas, TX 75202

**Leonard Benowich**
Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604

**Cemetery Planning Resource Alliance, LLC**
Huzjak Law Office, LLC
4582 S. Ulster Street
Suite 650
Denver, CO 80237

**Joseph F. Postnikoff**
Goodrich Postnikoff & Albertson, LLP
777 Main St., Suite 1360
Ft. Worth, TX 76102

**Steven D. Usdin**
Cohen Seglias Pallas Greenhall & Furman
30 S. 17th St., 19th Floor
Philadelphia, PA 19103

**Robert P. Franke**
Strasburger & Price, L.L.P.
901 Main Street, Suite 4300
Dallas, TX 75202

**Jennifer Stapleton Morgan**
Hand Arendall, LLC
11 N. Water St.
RSA Tower, Ste. 30200
Mobile, AL 36602

**Christopher James Muzzi**
Moseley Biehl Tsugawa Lau & Muzzi LLLC
Alakea Corporate Tower
1100 Alakea Street, 23rd Floor
Honolulu, HI 96813

**Jarrett L. Hale**
Hunton and Williams, LLP
1445 Ross Avenue, Suite 3700
Dallas, TX 75201

**Michelle A. Mendez**
Hunton & Williams

1445 Ross Avenue, Suite 3700
Dallas, TX 75202

**Joseph D. Frank**
Frank-Gecker LLP
325 North LaSalle St., Ste. 625
Chicago, IL 60610

**John Mark Chevallier**
McGuire, Craddock & Strother, P.C.
2501 N. Harwood, Suite1800
Dallas, TX 75201

**PMP II, LLC**
co PRM Realty Group, LLC
150 North Wacker Dr., Suite 1120
Chicago, IL 60606-1611

**Melanie Pearce Goolsby**
Pronske & Patel, P.C.
2200 Ross Avenue, Suite 5350
Dallas, TX 75201

**Gerrit M. Pronske**
Pronske & Patel, P.C.
2200 Ross Avenue
Suite 5350
Dallas, TX 75201

**John D. Penn**
Haynes and Boone, LLP
201 Main Street, Suite 2200
Fort Worth, TX 76102

**Hugh Massey Ray, III**
McKool Smith P.C.
600 Travis, Suite 7000
Houston, TX 77002

**Ruth A. Van Meter**
McKool Smith
600 Travis Street, Suite 7000
Houston, TX 77002

**Howard Marc Spector**
Spector & Johnson, PLLC
12770 Coit Road
Banner Place, Suite 1100
Dallas, TX 75251

**Steven C. Metzger**
Metzger & McDonald PLLC
3626 N. Hall Street, Suite 800
Dallas, TX 75219-5133

**Brian Thomas**
1730 N. Clark St., No. 2607
Chicago, IL 60614

**Warren H. Smith**
Warren H. Smith & Associates, P.C.
325 N. St. Paul Street, Suite 1250
Dallas, TX 75201